



Legislative Fiscal Bureau

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July 7, 2015

TO: Members
Wisconsin Senate

FROM: Bob Lang, Director

SUBJECT: Senate Amendment 1 (LRBb0702) to SSA 1 to SB 21

Following is a summary of items of Senate Amendment 1 (LRBb0702) to SSA 1 to SB 21.

1. PUBLIC RECORDS

Delete the provision of the substitute amendment which would have provided that the records and correspondence of any officer of the Legislature, any legislative employee, and of any legislative service agency would not be considered public records for purposes of public records preservation by the Public Records Board. [Under current law, the records and correspondence of any member of the Legislature are not considered public records for purposes of public records preservation by the Public Records Board.]

[SA Item: 4]

Delete the provision of the substitute amendment which would have provided that "deliberative materials" would not be considered a public record for purposes of the state's public records law and specifying that deliberative materials would mean communications and other materials, including opinions, analyses, briefings, background information, recommendations, suggestions, drafts, correspondence about drafts, and notes, created or prepared in the process of reaching a decision concerning a policy or course of action or in the process of drafting a document or formulating an official communication. Deliberative materials would include inter-authority and intra-authority communications but would not include: (a) communications with persons who are not authorized to participate in the process of reaching a decision, drafting a document, or formulating an official communication; and (b) communications with persons other than an authority (as defined under the state's public records law), unless the communication is within the scope of a contract between the person and an authority. This provision would have been effective

and initially applicable July 1, 2015.

[SA Items: 5, 11, and 13]

Further, delete the provision of the substitute amendment which would have provided that the Legislative Reference Bureau (LRB) must: (a) at all times observe the confidential nature of research requests received by it; and (b) provide that all drafting files and other records relating to reference, drafting, and research requests received by the LRB remain confidential at all times. This provision would have been effective and initially applicable July 1, 2015. Current law regarding LRB duties to preserve drafting records would be maintained.

[SA Items: 2, 10, and 12]

Finally, delete the provision of the substitute amendment which would have provided that no part of the state's public records law that conflicts with a rule or policy of the Senate or Assembly or joint rule or policy of the Legislature applies to a record that is subject to such legislative rule or policy. This provision would have been effective July 1, 2015.

[SA Items: 4, 6, and 12]

2. LEGISLATOR DISCLOSURE PRIVILEGES

Delete all provisions of the substitute amendment related to legislator disclosure privileges which would have provided that:

A legislator has a legal privilege or right to refuse to disclose, and to prevent a current or former legislative staff member from disclosing, all of the following communications and related records if made within the course of legislative business during the legislator's term of office: (a) a communication between the legislator or a member of the legislator's personal staff, or another person acting on behalf of the legislator, and a member of the clerk or sergeant staff; (b) a communication between the legislator or a member of the legislator's personal staff, or another person acting on behalf of the legislator, and a member of the nonpartisan staff; (c) a communication between the legislator, or a person acting on behalf of the legislator, and a member of the legislator's personal staff; (d) a communication between two or more members of the nonpartisan staff or clerk and sergeant staff related to the legislative business of a legislator; (e) a communication between two or more members of the legislator's personal staff; and (f) a communication between the legislator or a member of the legislator's personal staff, or another person acting on behalf of the legislator, and any other person. In addition, the substitute amendment would have specified that a legislator has a legal privilege or right to refuse to disclose, and to prevent a current or former legislative staff member from disclosing, information from which can be ascertained the identity of any person who communicates with the legislator within the course of legislative business during the legislator's term of office. For purposes of these legislator privileges, legislative business means all aspects of the legislative process, broadly construed, and includes: (a) researching, drafting, circulating, discussing, introducing, and amending legislative proposals; (b) the development of public policy, including research, analysis, consideration, and discussion of issues relevant to public policy; (c) all aspects of legislative

proceedings; (d) all matters related to the policies, practices, and procedures of the legislative branch; (e) all matters related to the work of a legislative committee; (f) investigations and oversight; (g) constituent relations; and (h) all other powers, duties, and functions assigned by law, rule, custom, policy, or practice to the Legislature, one house of the Legislature, a committee of the Legislature, or a member of the Legislature. Further, the substitute amendment would have provided that legislative business does not include criminal conduct or political campaigning. For purposes of these legislator privileges, personal staff means the employees assigned to or interning in the office of a legislator. A legislator's term of office is considered to begin on the date of certification of the legislator's election to the Legislature.

The substitute amendment would have required legislative service agencies to at all times observe the confidential nature of all communications, records, and information that may be subject to these legislator privileges. Further, the substitute amendment would have provided that these legislator privileges or rights may be waived only by the express personal waiver of each legislator who may claim the privilege. Disclosure of a communication, record, or information that is legally privileged by any person to any other person, regardless of whether that disclosure is authorized by the legislator and including an authorized disclosure by nonpartisan staff, would not have constituted a legal waiver of the privilege. A legislative staff member or former legislative staff member would have been required to assert and not waive a legal privilege on behalf of a legislator who may claim the legal privilege. Legislative staff members includes: (a) members of the legislator's personal staff; (b) members of the nonpartisan staff; or (c) clerk or sergeant staff. The substitute amendment specified that these provisions related to legislator privilege may not be construed to limit or restrict in any way a privilege or other protection available to a legislator under any other law.

This provision would have been effective and initially applicable July 1, 2015.

[SA Items: 3, 8, 10, and 12]

3. NONPARTISAN LEGISLATIVE SERVICE AGENCIES' COMMUNICATIONS

Delete the substitute amendment provision which would have provided that the confidentiality requirements imposed on nonpartisan legislative services agencies may not be construed to prohibit any staff member of a nonpartisan legislative service agency from communicating with any staff member of another nonpartisan legislative service agency for the purpose of serving the Legislature and its members or from disclosing any communication, record, or information in accord with a rule, custom, policy, or practice of the Legislature. This provision would have been effective July 1, 2015.

[SA Items: 3 and 12]

4. JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS

Delete the substitute amendment provision which would have modified the composition of the 10 member Committee to include 10 legislators, consisting of five senators and five

representatives appointed as are members of standing committees in their respective houses. As a result, current law would be maintained. Currently, the Committee is composed of 10 members as follows: (a) two majority party senators, one minority party senator, two majority party representatives, and one minority party representative, appointed as are the members of standing committees in their respective houses; (b) an assistant attorney general appointed by the Attorney General; (c) a member of the public who is not a participant in any public retirement system in Wisconsin, to be selected by the Governor; (d) the Commissioner of Insurance or an experienced actuary in the Commissioner's Office designated by the Commissioner; and (e) the Secretary of Employee Trust Funds or his or her designee.

[SA Item: 1]

5. DELETE NEW CCAP DEFINITION AND REMOVAL OF CERTAIN INFORMATION FROM WCCA

Delete the substitute amendment provisions creating statutory language defining the Courts' Consolidated Court Automation programs and specifying that the Director of State Courts must remove from the Wisconsin Circuit Court Access Internet site all information relating to a criminal case if all of the following have occurred: (a) all charges have been dismissed by the court prior to trial; (b) all dismissed charges were offenses for which the maximum period of imprisonment was six years or less; (c) none of the dismissed changes was for a violent offense as defined in s. 301.048(2)(bm) of the statutes; (d) an order having been issued by the court having jurisdiction to remove such information; and (e) the dismissed charges were filed when the person charged was under the age of 25.

[SA Items: 7 and 9]